



FIL-QORTI TAL-MAGISTRATI TA' MALTA

MAGISTRAT DR FRANCESCO DEPASQUALE

Seduta ta' nhar it-Tnejn hamsa u ghoxrin (25) ta' Gunju 2018

Rikors Numru 228/15 FDP

Dr Simon Busuttil
(ID 242669M)

vs

Josef Caruana
(ID 150573M)

Il-Qorti:-

Rat ir-rikors promotur ippresentat fit-3 ta' Awissu 2015 fejn ir-rikorrent talab lill-Qorti tikkundanna lir-rikorrent, bhala editur tal-gurnal It-Torca

(1) Prevja li din l-Onorabbli Qorti tiddeciedi u tiddikjara li l-artikolu ppubblikat fuq il-gurnal 'L-Orizzont' fit-tlieta (3) ta' Awissu tas-sena elfejn u hmistax (2015) fl-ewwel (1) u fil-hames (5) pagna, intitolat fl-ewwel (1) pagna ' Busuttil sieket dwar jekk iltaqax ma' Gaffarena' li jkompli fuq il-hames (5) pagna bit-titolu 'HEKK KIF NIRBAH JIEN IRRID NAFFACCJA DAN KOLLU!' kien jikkontjeni allegazzjonijiet u insinwazzjonijiet inveritjieri, foloz u malafamanti fil-konfront tal-attur u li ghandhom bhala skop li joffendu l-unur, ir-reputazzjoni u l-fama tieghu u li jesponuh ghar-redikolu u disprezz tal-pubbliku u/jew ihammgu r-reputazzjoni tieghu, senjatament fejn gie allegat li l-attur " ... indikalu car li jekk ried jerga' jiftah il-pompa tal-petrol f'Hal Qormi kellu jaghtih dokumenti relatati mal-każ tad-Daewoo, dan bi skop li jkisser lil John Dalli", kif ukoll numru ta' siltiet ohra li gew ippubblikati fl-imsemmi artikolu;

(2) Tikkundanna lill-intimat sabiex ihallas lill-attur dik is-somma li tiffissa l-istess Onorabbli Qorti, liema somma ma teccedix l-ammont ta' hdax-il elf, sitt mija u sitta u erbghin ewro (11,646.00) bhala danni b'applikazzjoni tal-Att dwar l-Istampa, Kap. 248 tal-Ligijiet ta' Malta.

Rat l-ewwel artikolu meritu tal-kawza odjerna miktub minn Rodrick Zerafa fejn, fil-faccata, hemm l-artikolu b'titolu ta' **"Busuttil sieket dwar jekk iltaqax ma' Gaffarena"** illi jibda fil-faccata u jkompli fil-pagna hamsa taht it-titolu **"Hekk kif nirbah jien irrid naffaccja dan kollu!"**, u jghid dan li gej:

F'kollegament telefoniku fuq Radio 101 il Hadd filghodu, il-Kap tal-Partit Nazzjonalista Simon Busuttil naqas milli jikkummenta fuq il-laqgħa li kellu hu b'mod personali ma' Joe Gaffarena, fejn indikalu li jekk ried li jerga' jiftah il-pompa tal-petrol li kellu f'Hal Qormi huwa kellu jagħtih dokumenti relatati mal-każ ta' Daewoo, dan bi skop li jkisser lil John Dalli. Din l-istorja kienet żvelata mill-gurnal IT-TORCA, nhar it-2 ta' Awwissu. Sadanittant, skont sorsi li dan il-gurnal, ittiehdet deciżjoni mit-tmexxija tal-PN biex ma ssirx referenza għall-istorja żvelata mit-TORCA.

Fuq ir-rapport tal inkjesta tal-każijiet tal-familja Zammit, il-Kap tal-Partit Nazzjonalista, Simon Busuttil qal li hemm skorrettezzi kbar. Huwa zied jghid li hemm rabta bejn il-familja Zammit u l-familja Gaffarena permezz ta' negozju. Busuttil zied jghid li din ir-rabta tinkludi l-barka ta' Kastilja wkoll. Huwa sejjah din ir-rabta bhala katina ta' poter, flus u kriminalità.

Il-Kap tal-Partit Nazzjonalista staqsa dwar x'ja' Ray Zammit fuq il-Gvern biex il Prim Ministru u l-Gvern qed jibqa' jipprotegihom. Busuttil qal li dan huwa każ ta' daqqa ta' harta għall-Pulizija.

Simon Busuttil staqsa b'mod ironiku l-frazi "Dan bis-serjeta?" fil-konfront tal- Ministru Carmelo Abela wara li huwa kien ta' warning lil Ray Zammit.

Il-kap tal-PN qal li trid tinbidel il-politika f'Malta biex ikun hemm fiducja fil-politika u l-politici. Huwa sahaq li jrid ikun hemm tindifa kbira "tal-hmieg" li hemm fil-politika.

Simon Busuttil fl-intervent tieghu fuq ir-radju tal-Partit Nazzjonalista sejjah il-kumpanija Gasol bhala kumpanija falluta. Fi kliemu Busuttil kien ottimist hafna ghax qal li hekk kif jirbah l-Elezzjoni Generali huwa jrid jaffaccja l-progett tal-powerstation li skont hu huwa falliment.

Il-Partit Nazzjonalista f'it tal-jiem ilu talab lill-Avukat Generali jinvestiga l-progett tal-powerstation. Dwar il-qtugh tal-provista tad-dawl Simon Busuttil qal li m'hemmx bzonn niproducu aktar elettriku iżda hemm aktar il-bzonn li ninvestu fid-distribuzzjoni tal-elettriku, ghax m'hemmx bzonn ta' investment fuq il-generazzjoni tal-elettriku.

Dwar il-pensjonijiet, il-Partit Nazzjonalista għandu żewg mistoqsijiet wara li kkritika b'mod frontali l-proposta tal-Gvern Laburista fuq il-pensjonijiet.

Busuttil saqsa dwar kemm se jibqa' jkun hemm flus biex jithallsu l-pensjonijiet u ddubita dan il-fatt. Il-Kap tal-Partit Nazzjonalista kritika l-ammont li qed nircievu llum bhala pensjoni iżda naqas milli jghid li l-Partit Nazzjonalista fl-ahhar leġiżlatura lanqas biss prova jzidha. Busuttil qal li l-Gvern naqas milli jahseb sew dwar din il-miżura.

L-aspirazzjoni ta' Busuttil fil-Gvern qal li jrid li jkun hemm politika nadifa. Ghal darbohra huwa sejjah dan il-Gvern bhala wiehed korrot aktar minn ta' Mintoff u Lorry Sant.

Huwa ghalaq l-intervent tieghu bil-frazi - "Is-sewwa jirbah żgur".

B'risposta ghal dan kollu stqarrija tal-Partit Laburista qalet li l-aktar kelma li Simon Busuttil uża fl-ahhar gimghat kienet "Gaffarena" iżda qatt ma tkellem dwar il-laqgħa li kellu lejlet l-elezzjoni mal-istess persuni fejn talab dokumenti.

Il-Partit Laburista qal li kien ikun tajjeb kieku l-Hadd filghodu l-Kap tal-Oppożizzjoni spjega x'ried jghid biha li jekk riedu jifthu l-pompa "jafu xi jridu jagħmlu".

Il-hmieg li ilu jisforza biex jitfa' Simon Busuttil bin-negattività tieghu, kollu ser jispicca wara biebu.

Il-Gvern wkoll esprima t- thassib dwar dak li nġhad minn Simon Busuttil. Il Gvern qal li l-I-Kap tal-Oppożizzjoni rega' għażel li jitellem b'mod negattiv u partigġjan dwar inkjesta ordnata mill-Prim Ministru u magħmula mill-Imhalled Michael Mallia. Minflok jitfa' insinwazzjonijiet bla bazi, wiehed kien jistenna lill-Kap tal-Oppożizzjoni li jitellem dwar kif il-kazijiet ewlenin investigati saru fi żmien il-Gvern immexxi mill-partit li minnu jagħmel parti. Tajjeb ukoll li l-I-Kap tal-Oppożizzjoni jghid x'inhi l-fehma tieghu dwar Carmelo Mifsud Bonnici u Beppe Fenech Adami li kienu responsabbli mill-Ministeru li taħthom kienu jaqgħu l-Pulizija fi żmien meta sehew dawn il-kazi.

Il-Gvern ifakkar li l-inkjesta issa tinsab għand l-Avukat Generali u l-Kummissarju tal-Pulizija biex jieħdu l-passi kollha meħtieġa.

Rat ir-risposta ta' l-intimat ippresentata fl-24 ta' Awissu 2015 fejn laqa' għal dak mitlub billi qal is-segwenti:

- 1. Il-kitba in kwistjoni tikkontjeni fatti u ahbarijiet u xi osservazzjonijiet dwar dawn li jaqgħu taħt "value judgement" li miegħu il-qarrej hu hieles li jaqbel jew ma jaqbilx.*
- 2. Il-kwistjoni "Gaffarena", kif saret illum magħrufa, hi oggett ta' nteress liku li gibed l-attenzjoni ta' diversi nhawi u jista jingħad tal-pajjiz kollu. Din hi kwistjoni li tqajjmet mir-Rikorrent stess u mill-kollegi politici tieghu (kif kellhom dritt) u l-esponent fdan ir-rigward qeda dmiru lejn il- qarrejja tieghu billi għarraffhom b'fatti li sar jaf bihom liema dmir jikkorrispondi mad-dritt tal-qarrejja li jkun mgharrfa bl-istess.*
- 3. Illi llum dejjem qed iżjed jigi konoxxut is-siwi, f'demokrazija, tal-gurnalizmu investigativ u gwaj jekk dan jigi mfixkel jew jinstadd il-halq. Fl-istess waqt hi llum gurisprudenza kostanti li min jiddeciedi li jidhol fil- tista titqies insolenti (dejjem f'certu qies) ecc.*

Rat illi fil 15 ta' Ottubru 2015 il-partijiet qabblu illi l-provi migbura fil-kawza 227/15 fl-ismijiet '*Simon Busuttil vs Josef Caruana*' ghandhom japplikaw ghal kaz odjern ukoll.

Rat l-affidavit ta' **Dr Simon Busuttil**, ippresentat fit-19 ta' Novembru 2015.

Semghet ix-xhieda ta' **Dr Joseph Cassar**, moghtija fis-7 ta' April 2016, u prodott mir-rikorrenti, in ezami u kontro ezami.

Rat illi fis 7 ta' April 2016 ir-rikorrenti ddikjara illi ma kellux aktar provi x'jippresenta.

Semghet ix-xhieda ta' **Josef Caruana** moghtija fis-6 ta' Ottubru 2016.

Ra l-affidavit ta' **Joseph Gaffarena** u ta' **Marco Gaffarena** ppresentat mill-intimat fix-xhieda tieghu u li tinstab inserita fil-process 231/15 fl-ismijiet '*Dr Simon Busuttil vs Josef Caruana*' (fol 33 u 35) illi qieghda tigi deciza flimkien mal-kawza odjerna.

Semghet ix-xhieda ta' Joseph Gaffarena, moghtija fis-16 ta' Frar 2017 u prodott mill-intimat, in ezami u kontro ezami.

Semghet ix-xhieda ta' Marco Gaffarena, moghtija fl-24 ta' April 2017 u prodott mill-intimat, in ezami u kontro ezami.

Semghet ix-xhieda ulterjuri ta' **Dr Joseph Cassar**, moghtija fl-20 ta' Novembru 2017, u prodott mir-rikorrenti, in ezami u kontro ezami.

Rat illi fl-20 ta' Novembru 2017 il-partijiet ddikjaraw illi ma kienx hemm provi ohra x'jippresentaw.

Semghet is-sottomissjonijiet orali tal-abbli difensuri taz-zewgt partijiet moghtija fl-10 ta' Mejju 2018, wara liema data il-kawza giet differita ghas-sentenza.

Ikkunsidrat

Jirrizulta, mill-provi prodotti, illi r-rikorrenti, Dr Simon Busuttil, meta gie ppubblikat l-artikolu meritu tal-kawza odjerna, kien Kap tal-Partit Nazzjonalista u Kap tal-Opposizzjoni tal-gurnata.

Jirrizulta wkoll illi qabel l-Elezzjoni Generali tas-sena 2013, huwa kien Vici Kap tal-Partit Nazzjonalista.

Jirrizulta illi fil-periodu meta gie ippubblikat l-artikolu meritu tal-kawza odjerna, kienu qieghdin jigu rappurtata stejjer fuq il-mezzi tax-xandir illi kienet tinvolvi lill-familja Gaffarena, wahda illi kienet tirrigwarda l-ghoti ta' permess ghall-pompa tal-petrol gewwa Hal-Qormi lill Joseph Gaffarena u ohra illi kienet tirriwguarda l-akkwist da' parte ta' Marco Gaffarena ta' sehem ta' binja gewwa Strada Zekka, il-Belt, liema storja spiccat kemm fuq il-mezzi tax-xandir kif ukoll fil-Qrati.

Jirrizulta illi fit-tnejn (2) ta' Awissu 2015, il-gazzetta ta' nhar ta' Hadd, it-Torca, tellghet storja fil-faccata taghha u komplet fid-disgha pagna, fejn allegat illi r-rikorrent Simon Busuttil, qabel l-elezzjoni tas-sena 2013, talab illi jiltaqa' mal-familja Gaffarena, precizament Joe Gaffarena u Marco Gaffarena, sabiex jinghata informazzjoni da' parte ta' l-istess Gaffarena dwar il-kaz tad-Daewoo illi kien sehh ghoxrin sena qabel, biex ikun jista jattakka politikament lill John Dalli -dana

il-kaz huwa l-meritu tal-kawza 227/15 fl-ismijiet ‘*Simon Busuttil vs Josef Caruana*’ Rik Nru 227/15 illi qed jigi deciz kontestwalment mal-kawza odjerna.

Jirrizulta illi, tali storja eventwalment giet irrappurtata fuq il-One News, li hija l-meritu tal-kawza Rik Nru 230/15 – ‘*Simon Busuttil vs Aleander Balzan*’ u fuq il-‘One Radio’, li hija l-meritu tal-kawza Rik Nru 230/15 – ‘*Simon Busuttil vs Aleander Balzan*’, liema kawzi qed jigu decizi kontestwalment mal-kawza odjerna.

Jirrizulta wkoll illi tali storja giet ukoll irrappurtata fil-gurnal l-Orizzont tal-4 ta’ Awissu 2015, liema artikolu huma l-meritu ta’ Rik Nru 231/18 fl-isem ‘*Simon Busuttil vs Josef Caruana*’, liema kawza qed tigi deciza kontestwalment mal-kawza odjerna.

Ikkunsidrat

Jirrizulta illi, fil-proceduri odjerni, xehdu, apparti z-zewgt partijiet, Dr Joseph Cassar prodott mir-rikorrent, Joseph Gaffarena, li tieghu gie ppresentat wkoll affidavit datat 3 ta’ Awissu 2015, ossija dakinhar illi gie ppubblikat l-artikolu meritu tal-kawza odjerna, u Marco Gaffarena, dawn it-tnejn ta’ l-ahhar prodotti mill-intimat.

Jirrizulta illi, skond ma jintqal fl-artikolu meritu tal-kawza odjerna, ir-rikorrent, meta kien ghadu Vici Kap tal-Partit Nazzjonalista u qabel l-Elezzjoni Generali ta’ Marzu 2013, kien talab specifikament sabiex jiltaqa’ ma’ Joseph u Marco Gaffarena, missier u iben, u kien inkariga lill Dr Joseph Cassar, dak iz-zmien Ministru tas-sahha fil-Gvern tal-gurnata immexxi mill-Partit Nazzjonalista, sabiex jirringa tali laqgha.

Jirrizulta, skond kif allegat, illi l-laqgha kienet intiza da’ parte tar-rikorrent sabiex l-familja Gaffarena tipproducilu dokumentazzjoni izda illi l-familja Gaffarena ma gabitlu ebda dokumentazzjoni filwaqt insistiet illi r-rikorrenti, bhala Vici Kap tal-Partit Nazzjonalista u bhala pjacir fil-periodu ta’ qabel l-Elezzjoni Generali, kellu jghinhom sabiex jigibu l-permess ghall-pompa tal-petrol gewwa Hal Qormi, liema permess il-MEPA kienu qed jirrifjutaw illi jaghtuh.

Jirrizulta, skond dak miktub fl-artikolu, illi r-rikorrent “*naqas milli jikkummenta fuq il-laqgha li kellu hu b'mod personali ma' Joe Gaffarena, fejn indikalu li jekk ried li jerga' jiftah il-pompa tal-petrol li kellu f'Hal Qormi huwa kellu jaghtih dokumenti relatati mal-kaz ta' Daewoo, dan bi skop li jkisser lil John Dalli*”.

Ikkunsidrat

Dr Joseph Cassar, prodott mir-rikorrent, jikkontendi illi f’laqgha illi huwa kellu ma’ Joseph Gaffarena, dana kien talbu li jirringalu laqgha mar-rikorrent Dr Simon Busuttil, liema laqgha huwa kien ha hsieb illi jirringa, u li saret gewwa d-Dar Centrali tal-Partit Nazzjonalista, ghal liema laqgha Joseph Gaffarena attenda ghaliha wahdu flimkien ma’ Dr Joseph Cassar u r-rikorrent.

Jirrizulta, skond Dr Cassar, illi Joseph Gaffarena ried jiltaqa’ mar-rikorrent sabiex jiddiskuti l-problema tieghu relatata mar-rifjut tal-hrug ta’ permess ghall-pompa tal-petrol ta’ Hal Qormi illi huwa kellu, u Gaffarena intalab minn Dr Cassar igib mieghu d-dokumentazzjoni kollha in konnessjoni ma’ tali pompa u l-permessi illi huwa kien qieghed jitlob.

Jirrizulta illi, skond Dr Cassar, waqt il-laqgha, Joseph Gaffarena lmenta mieghu dwar il-posizzjoni mehuda mill-MEPA kontra l-pompa tal-petrol tieghu u, skond Dr Cassar, ir-risposta ta’ Dr Busuttil

kienet lill Joseph Gaffarena: *“kien jaf x’inhuma l-affarjiet li kellu jaghmel biex he puts himself in order with MEPA.”*

Jirrizulta, dejjem skond Dr Cassar, illi iben Joseph Gaffarena, Marco Gaffarena, ma kienx presenti, u fl-ebda mument waqt il-laqgħa ma saret referenza għall-kwistjoni tad-Daewoo u John Dalli u Joseph Gaffarena qatt ma ntalab jipproduci dokument in konnessjoni mad-Daewoo.

Ikkunsidrat

Jirrizulta illi Joseph Gaffarena, fix-xhieda tiegħu, kif ukoll ikkonfermat fl-affidavit tiegħu miktub min-nutar peress illi huwa stqarr li ma jafx jikteb, huwa jagħti s-segwenti verżjoni tal-fatti:

Ghedtlu (lill Marco Gaffarena) “imxi miegħi ghedtlu għax iriedna Simon Busuttil. Ghedtlu nahseb li ser jagħtuna l-permess tal-pompa,” jien. U jiena morna, kif dħalt, mejda kbira hekk. Cassar hawn fit-tarf tagħha, jien hawn, it-tifel tiegħi hdejja, u Simon bilqiegħda hekk quddiemna. Qalli “mela ma gibthomx il-karti?” Ghedtlu “x’ karti huma?” Qalli “mhux tad-Daewoo!” Ghedtlu “jien hsibt li l-karti tal-pompa. Id-Dawoow x’ għandha x’ taqsam?”, jien. “Ta’ John Dalli ta’ John Dalli”. Ghedtlu “jiena x’ għandi x’ naqsam f’ dawn l-affarijiet? Ghedtlu jien fuq il-pompa għandi x’ naqsam, dak li jinteressani, mhux minn John Dalli!” Qam Simon minn bilqiegħda u qal “għax is-Sur Gaffarena jaf x’ għandu jagħmel.” Ghedtlu “min qallek li ma nafx x’ għandi nagħmel?” Ghedtlu “bye”. U talqt ‘il barra. Dik l-istorja.

Jirrizulta illi, fix-xhieda ta’ Joseph Gaffarena, huwa jikkontendi illi lill-Partit Nazzjonalista huwa kien ta hafna flus *“biex ngħinhom għal partit dak iz-zmien”* u *“tlett xhur qabel (il-laqgħa mar-rikorrenti) tajthom għoxrin elf. Tliet xhur qabel, hadhomli ta’ xejn il-familja tiegħi!”*

Jirrizulta illi, mitlub jgħid jekk kienx qed jippretendi illi l-Partit Nazzjonalista johroglu l-permess tal-pompa tal-petrol ta’ Hal Qormi, huwa jgħid is-segwenti:

Ma’ hadd iehor mhux hekk għamlu? Tahulhom il-permess. Mhux ser noqgħod insemmi lil min. Ma jinteressani minn hadd jien. Imma kulhadd jaf min huma. Daqs kemm taw.

Jirrizulta, finalment, illi dejjem skond Joseph Gaffarena, illi wara l-Elezzjoni Generali, il-permezz tal-pompa tal-petrol inhariglu, għalkemm kellu jagħmel garanzija ta’ nofs miljun Euro.

Dwar ir-rikorrent, Joseph Gaffarena kellu dan x’jgħid:

“Dejjem jattakkani familjari, personali, familja. Mill-pedament sa fuq. Il-familja x’ tahti? Għalfejn dejjem jattakka l-familja tiegħi? Ma għandux hu familja x’ jara? Ma għamilx zbalji mal-familja tiegħu? Jien ma għamiltx wiehed. Wiehed. Imma hu għamel kemm għamel ...!

...

Tiegħi jara? Tagħna jara? Lilna jattakka l-hin kollu!? Dahhal lilna u għadu jattakkana s' issa u l-pompa qiegħda magħluqa. Ghaliex? Għandi daqshekk tfal! X' jagħmlu t-tfal? Imorru jitgħallqu kollha?! U jien magħhom l-ewwel wiehed?!

...

...il-pompa jien. Barra li hadu huma l-eluf ta' liri kbar."

Jirrizulta illi Marco Gaffarena, fix-xhieda tiegħu, dwar il-laqgħa jgħid illi huwa kien presenti dakinhar tal-laqgħa flimkien ma' missieru, Joseph Gaffarena, u Dr Joseph Cassar, u dwar il-laqgħa qal li jmiss:

Kien hawn sufan hawn Sur Magistrat, sufan hawn u sufan hawn, u kien hawn mejda baxxa hawnhekk. Simon Busuttil qam minn fuq is-sufan; imma mhux minn fuq il-mejda! Hadd ma qam minn fuq il-mejda.

Jirrizulta illi, konfrontat bil-fatt illi missieru, Joseph Gaffarena, stqarr illi ltaqgħu madwar mejda, Marco Gaffarena jgħid is-segwent:

Jekk il-mejda kienet madwar is-sufan tagħmel allura inneħhi l-mejda min-nofs?! Mela l-ufficju tiegħi! (jidhaq) la kienet hemm! Jien x' nagħmlilha?

Da zgur li tad-dahq. Taf fejn mhix tad-dahq x' hin kont intihom l-ghaxart elef...

Ma tghidhiex meta kienu icempluli ghaxar elef - ghaxart elef biex jagħtuni permess; ghida dik; ghiduha. Il-hin kollu jcemplu.

Ikkunsidrat

Qabel ma l-Qorti tghaddi biex tagħmel l-apprezzament tal-provi tagħha w l-konkluzjonjiet minnha milhuqa, ikun opportun illi jigu kkunsidrat l-elementi legali tad-difiza ta' l-intimat.

Jirrizulta, mill-ecezzjonijiet mqajjma mill-intimat bhala editur tal-gurnal, li d-difiza mqajjma mill-intimat kienet principalment dik ta' "fair comment" dwar persuna involuta fil-politika, bhalm huwa r-rikorrent, li huwa Kap tal-Opposizzjoni, liema kritika setgħet tkun oghla, u anke iebsa kif ukoll dwar id-dover illi huwa kellu, bhala gurnalist, illi jwassal ahbar lill-qarrejja sabiex jigi interpretat minnhom.

L-intimat jistqarr illi bhala editur ezercita d-diligenza rikjesta mill-ligi filwaqt illi sahaq li l-artikolista kellu d-dritt tikkummenta dwar l-operat tar-rikorrent.

Dwar tali id-dritt, fil-kawza '**Axel Springer AG vs Germany**', deciza mill-Grand Chamber tal-Qorti Ewropeja għad-Driftijiet tal-Bniedem fis-7 ta' Frar 2012, saret referenza għall-principji generali li jirregolaw il-liberta' ta' l-espressjoni w il-gurnalist, kif ukoll introduciet serje ta' kriterji li kellhom jigu kkunsidrati sabiex jigi meqjus il-bilanc li għandu jittlaħaq bejn il-liberta' ta' l-espressjoni u d-dritt tal-individwu privat li jkollu r-reputazzjoni tiegħu protetta, fejn qalet is-segwent:-

78. *Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no "democratic society". As set forth in Article 10, freedom of expression is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly.*

Dwar ir-rwol li ghandu jkollu gurnalist fil-qasam tal-liberta ta' l-espressjoni, l-Qorti tkompli biex tghid is-segwent:

79. *The Court has also repeatedly emphasised the essential role played by the press in a democratic society. Although the press must not overstep certain bounds, regarding in particular protection of the reputation and rights of others, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest. Not only does the press have the task of imparting such information and ideas; the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of "public watchdog".*

.....

Not only do the media have the task of imparting such information and ideas; the public also has a right to receive them. (sottolinear ta' dina l-Qorti)

81. *Journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation. Furthermore, it is not for the Court, any more than it is for the national courts, to substitute its own views for those of the press as to what techniques of reporting should be adopted in a particular case.*

Tali rwol importanti tal-gurnalist u d-dritt tal-liberta' ta' l-espressjoni, madanakollu, ghandu jigi bilancjat bi drittijiet u obbligi illi l-istess gurnalist, fil-qadi ta' dmirijietu, ghandu josserva u, di fatti, il-Qorti Ewropea, dwar tali doveri da' parte tal-gurnalist, tghid hekk:

82. *However, Article 10 § 2 of the Convention states that freedom of expression carries with it "duties and responsibilities", which also apply to the media even with respect to matters of serious public concern. These duties and responsibilities are liable to assume significance when there is a question of attacking the reputation of a named individual and infringing the "rights of others". Thus, special grounds are required before the media can be dispensed from their ordinary obligation to verify factual statements that are defamatory of private individuals. Whether such grounds exist depends in particular on the nature and degree of the defamation in question and the extent to which the media can reasonably regard their sources as reliable with respect to the allegations.*

Biex jigi accertat jekk intlahaqx bilanc bejn id-dritt tal-liberta' ta' l-espressjoni u id-dritt tal-protezzjoni tar-reputazzjoni, il-Qorti Ewropeja ghad-Drittijiet tal-Bniedem, fl-istess decizjoni fuq imsemmija, tghaddi biex issemmi sitt kriterji importanti illi ghandhom jitqiesu sabiex jigi assikurat li, kif tghid il-Qorti, "*the right to freedom of expression is being balanced against the right to respect for private life*".

Dawna l-kriterji kif stabbiliti huwa s-segwenti:

(a) Contribution to a debate of general interest

90. An initial essential criterion is the contribution made by photos or articles in the press to a debate of general interest. The definition of what constitutes a subject of general interest will depend on the circumstances of the case. The Court nevertheless considers it useful to point out that it has recognised the existence of such an interest not only where the publication concerned political issues or crimes, but also where it concerned sporting issues or performing artists. However, the rumoured marital difficulties of a president of the Republic or the financial difficulties of a famous singer were not deemed to be matters of general interest

(b) How well known is the person concerned and what is the subject of the report?

91. The role or function of the person concerned and the nature of the activities that are the subject of the report and/or photo constitute another important criterion, related to the preceding one. In that connection a distinction has to be made between private individuals and persons acting in a public context, as political figures or public figures. Accordingly, whilst a private individual unknown to the public may claim particular protection of his or her right to private life, the same is not true of public figures. A fundamental distinction needs to be made between reporting facts capable of contributing to a debate in a democratic society, relating to politicians in the exercise of their official functions for example, and reporting details of the private life of an individual who does not exercise such functions.

Whilst in the former case the press exercises its role of “public watchdog” in a democracy by imparting information and ideas on matters of public interest, that role appears less important in the latter case. Similarly, although in certain special circumstances the public’s right to be informed can even extend to aspects of the private life of public figures, particularly where politicians are concerned, this will not be the case – even where the persons concerned are quite well known to the public – where the published photos and accompanying commentaries relate exclusively to details of the person’s private life and have the sole aim of satisfying the curiosity of a particular readership in that respect. In the latter case, freedom of expression calls for a narrower interpretation.

(c) Prior conduct of the person concerned

92. The conduct of the person concerned prior to publication of the report or the fact that the photo and the related information have already appeared in an earlier publication are also factors to be taken into consideration. However, the mere fact of having cooperated with the press on previous occasions cannot serve as an argument for depriving the party concerned of all protection against publication of the report or photo at issue.

(d) Method of obtaining the information and its veracity

93. *The way in which the information was obtained and its veracity are also important factors. Indeed, the Court has held that the safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the proviso that they are acting in good faith and on an accurate factual basis and provide “reliable and precise” information in accordance with the ethics of journalism.*

(e) Content, form and consequences of the publication

94. *The way in which the photo or report are published and the manner in which the person concerned is represented in the photo or report may also be factors to be taken into consideration. The extent to which the report and photo have been disseminated may also be an important factor, depending on whether the newspaper is a national or local one, and has a large or a limited circulation.*

(f) Severity of the sanction imposed

95. *Lastly, the nature and severity of the sanctions imposed are also factors to be taken into account when assessing the proportionality of an interference with the exercise of the freedom of expression.*

Ghandu jigi osservat ukoll illi, kif intqal fis-sentenza **Ligens vs Austria**, mhaddna mill-Qorti Maltin ukoll, il-politiku huwa soggett għall-livell ta' kritika ferm oghla minn-normal, u di fatti, s-sentenza tghid:-

Freedom of the press furthermore affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders. More generally, freedom of political debate is at the very core of the concept of a democratic society which prevails throughout the Convention.

The limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance. No doubt Article 10 para. 2 (art. 10-2) enables the reputation of others - that is to say, of all individuals - to be protected, and this protection extends to politicians too, even when they are not acting in their private capacity; but in such cases the requirements of such protection have to be weighed in relation to the interests of open discussion of political issues.

Kif gie osservat fil-kawza **Delphi AS vs Estonia** deciza mill-Qorti Ewropeja tad-Drittijiet tal-Bniedem fl-10 ta' Ottubru 2013, id-dritt tal-liberta' ta' l-espressjoni, li giet invokata mill-intimat, giet ikkunsidrata kif gej:

78. *The fundamental principles concerning the question whether an interference with freedom of expression is “necessary in a democratic society” are well established in the Court’s case-law and have been summarised as follows:*

(i) Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society'. As set forth in Article 10, this freedom is subject to exceptions, which ... must, however, be construed strictly, and the need for any restrictions must be established convincingly ...

.....

79. Furthermore, the Court reiterates the essential function the press fulfils in a democratic society. Although the press must not overstep certain bounds, particularly as regards the reputation and rights of others and the need to prevent the disclosure of confidential information, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest. In addition, the Court is mindful of the fact that journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation. The limits of permissible criticism are narrower in relation to a private citizen than in relation to politicians or governments.

80. The Court reiterates that the right to protection of reputation is a right which is protected by Article 8 of the Convention as part of the right to respect for private life. In order for Article 8 to come into play, however, an attack on a person's reputation must attain a certain level of seriousness and be made in a manner causing prejudice to personal enjoyment of the right to respect for private life.

81. When examining whether there is a need for an interference with freedom of expression in a democratic society in the interests of the "protection of the reputation or rights of others", the Court may be required to ascertain whether the domestic authorities have struck a fair balance when protecting two values guaranteed by the Convention which may come into conflict with each other in certain cases, namely on the one hand freedom of expression protected by Article 10, and on the other the right to respect for private life enshrined in Article 8.

82. The Court has found that, as a matter of principle, the rights guaranteed under Articles 8 and 10 deserve equal respect, and the outcome of an application should not, in principle, vary according to whether it has been lodged with the Court under Article 10 of the Convention by the publisher of an offending article or under Article 8 of the Convention by the person who has been the subject of that article. Accordingly, the margin of appreciation should in principle be the same in both cases.

83. The Court has considered that where the right to freedom of expression is being balanced against the right to respect for private life, the relevant criteria in the balancing exercise include the following elements: contribution to a debate of general interest, how well known the person concerned is, the subject of the report, the prior conduct of the person concerned, the method of obtaining the information and its veracity, the content, form and consequences of the publication, and the severity of the sanction imposed.

Tali principju kif fuq enuncjat reggha gie ripetut fil-kawza **Erla Hlynisdottir vs Iceland** deciza mill Qorti Ewropeja ghad-Drittijiet tal-Bniedem ricentement, ossija fil 21 ta' Ottubru 2014, fejn intqal is-segweni:

62. The protection of the right of journalists to impart information on issues of general interest requires that they should act in good faith and on an accurate factual basis and provide “reliable and precise” information in accordance with the ethics of journalism . Under the terms of paragraph 2 of Article 10 of the Convention, freedom of expression carries with it “duties and responsibilities” that also apply to the media, even with respect to matters of serious public concern. Those “duties and responsibilities” are significant when there is a question of attacking the reputation of a named individual and infringing the “rights of others”. Thus, special grounds are required before the media can be dispensed from their ordinary obligation to verify factual statements that are defamatory of private individuals. Whether such grounds exist depends in particular on the nature and degree of the defamation in question and the extent to which the media can reasonably regard their sources as reliable with respect to the allegations.

Fl-istess decizjoni, il-Qorti ghamlet is-segweni osservazzjonijiet dwar id-difiza ta' 'fair comment' imqajjma mill-intimat, maghrufa bhala 'value judgment' quddiem il-ECHR:

A fundamental distinction should be made between statements that are to be categorized as factual assertions and value judgments. In its contextual examination of the disputed statement as a whole, the Court must carry out its own evaluation of the impugned statement. Furthermore, the Court has acknowledged that the distinction between value-judgments and statements of fact may be blurred, and that the issue may need to be resolved by examining the degree of factual proof.

Dana l-argument huwa rifless anke fid-decizjoni illi l-istess Qorti kienet tat fil-kawza **Sizma vs Hungary** deciza f'Ottubru 2012 fejn intqal is-segweni:

"The Court would add that in order to assess the justification of the statements in question, a distinction needs to be made between statements of fact and value judgments, in that, while the existence of facts can be demonstrated, the truth of value judgements is not susceptible of proof. The requirement to prove the truth of a value judgment is generally impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10. The classification of a statement as a fact or a value judgment is a matter which, in the first place, falls within the margin of appreciation of the national authorities, in particular the domestic courts. However, even where a statement amounts to a value judgment, there must exist a sufficient factual basis to support it, failing which it may be."

Dwar 'fair comment', imbgħad, **Gatley on Libel and Slander** jghid:

To succeed in a defence of fair comment the defendant must show that the words are comment, and not a statement of fact. He must also show that there is a basis of fact for the comment, contained or referred to in the matter complained of. Finally, he must show that the comment is on a matter of public interest, one which has expressly or implicitly put before the public for judgment or is otherwise a matter with which the public has a legitimate concern. If, however, the plaintiff can show that the comment was not made honestly or was actuated by malice, he will defeat the plea.

Fil-kawza **Dr Louis Galea vs Etienne St John u Felix Agius** deciza fit 30 ta' April 2015, intqal is-segwentni :

... dwar l-aspett tad-difiza tal-kumment gust ilu zmien jinghad mill-Qrati taghna li, biex id-difiza tal-kumment gust tkun tghodd, jehtieg li min jistrieħ fuqha jsehħlu juri li (a) l-kumment kien imsejjes fuq fatt li jkun issemma fil-pubblikazzjoni li minnha jitressaq l-ilment; (b) il-fatt imsemmi jrid ikun sostanzjalment minnu; (c) il-kumment irid jintwera li jkun gustifikabbli jew misthoqq; (d) il-kumment irid ikun tali li jikkwalifika bhala kritika u mhux zebliħ, tghajjir jew insolenza; u (e) irid jagħti l-fehma onesta tal-kummentatur u li l-pubblikazzjoni ta' dik il-fehma ma saritx b'hażen jew bil-ħsieb preċiż li jwegġa' lil dak li jkun.

Tali taghlim huwa anke rifless f'gurisprudenza estera u, di fatti, fil-kawza **Spiller vs Joseph** deciza mill-Qorti tal-Appell Ingliza fl-1 ta' Dicembru 2010, Lord Phillips ghamel is-segwentni konsiderazzjonijiet meta wiehed iqis id-difiza ta' 'fair comment':

A subsidiary but important issue was what it was that a defendant had to prove in order to establish the defence of fair comment. Counsel for the plaintiff submitted that the defendant had to establish that: (i) the words complained of were comment; (ii) the comment was on facts; (iii) the facts commented on constituted a matter of public interest; (iv) the comment was objectively "fair"; that is the comment was one that was capable of being honestly founded on the facts to which it related, albeit by someone who was prejudiced and obstinate; (v) the comment represented the defendant's honest opinion. If he discharged all these burdens, the defence could none the less be defeated by proof of malice on the part of the defendant, but the onus of proving malice lay on the plaintiff. Both the Court of Appeal and the House of Lords held that there was no burden on the defendant to establish the fifth element. The defendant's honesty was assumed unless the plaintiff could disprove it by establishing malice.

Ikkunsidrat

Jirrizulta illi, fl-artikolu meritu tal-kawza odjerna, illi l-allegazzjoni illi saret fil-konfront tar-rikorrent kienet illi huwa ma kienx qieghed jagħti spjegazzjoni ghaliex qal lill-familja Gaffarena illi biex jottjenu il-hrug tal-permess tal-pompa tal-petrol tagghom gewwa Hal Qormi kelhom jagħtuh materjal biex jagħmel hsara lill ex-Ministru John Dalli.

Jirrizulta, illi l-intimat ibbaza l-istorja tieghu fuq sors anonimu illi taht tali informazzjoni, liema informazzjoni sussegwentement giet ikkonfermata minn Joseph Gaffarena meta sar kuntatt mieghu.

Jirrizulta ukoll illi l-ghada tal-pubblikazzjoni, Joseph Gaffarena u Marco Gaffarena ghamlu affidavit redatt mill-Avukat taghhom Dr Keith Bonnici u mahluf quddiem in-Nutar taghhom n-Nutar Mario Bugeja.

Din il-Qorti tosserva illi kellha l-opportunita illi tisma viva voce l-verzjoni tal-fatti moghtija minn Dr Joseph Cassar, li kien il-persuna li ha hsieb li organizza tali laqgħa, u lill Joseph Gaffarena u Marco Gaffarena, u setghet tiehu qies tal-komportament tax-xhieda fuq il-pedana tax-xhieda u l-attitudni taghhom lejn, kemm il-Qorti kif ukoll id-difensur tar-rikorrent, u abbazi ta' dan tista, minghajr ebda esitazzjoni tghid illi l-verzjoni tal-fatti kif moghtija minn Dr Joseph Cassar huma ferm aktar kredibbli u veritjeri minn dawk moghtija minn Joseph u Marco Gaffarena.

Il-Qorti tasal għal tali konkluzjoni in vista tal-fatt illi, filwaqt illi Dr Cassar kien konsistenti fix-xhieda tieghu u fil-verzjoni tal-fatti minnu moghtija, s-sinjuri Gaffarena, għalkemm missier u iben, jidher illi ma' kienux ppreparaw rwiehom sew meta taw ix-xhieda taghhom viva voce, problema illi huma ma kellhomx meta ghamlu l-affidavit taghhom li gie għalihom redatt u ffirmat mill-konsulenti legali taghhom.

Dana qieghed jinghad ghax, filwaqt illi Joseph Gaffarena viva voce jikkontendi illi huma dahhlu gewwa kamra fejn kien hemm mejda kbira u ltaqgħu madwar mejda, Marco Gaffarena, illi allegatament kien presenti għall l-istess laqgħa, viva voce jghid illi huma dahhlu u qagħdu bilqieghda fuq sufanijiet u l-aqgħa saret madwar sufanijiet u, meta Marco Gaffarena kien konfrontat mill-fatt illi missieri qal li ltaqgħu madwar mejda, huwa pprova jsalva l-posizzjoni tieghu billi jghid illi kien hemm mejda bejn is-sufanijiet.

Għalkemm tali dettall jista jaghti kaz illi huwa wiehed minimu u insignifikanti, il-Qorti ma tistax ma tosservax illi huwa f'tali dettall u fin-nuqqas ta' korroborazzjoni ta' tali dettall illi johrog car jekk ix-xhieda humiex qed jghidu l-verita' jew inkella qieghdin jivvintaw storja sabiex jagħmlu hsara lill persuna.

Il-Qorti bla ebda esitazzjoni ma għandha ebda dubju illi l-verzjoni tal-fatti moghtija minn Joseph u Marco Gaffarena ma hijiex veritjera u hija verzjoni tal fatti dettata mill-mibgheda illi l-istess Gaffarena għandhom fil-konfront tar-rikorrent Dr Simon Busuttil u l-Partit Nazzjonalista li tieghu huwa kien Vici Kap dak iz-zmien, u dana peress illi kienu qed jirrifjutaw illi jagevolawh biex johorgulu l-permess tal-MEPA għall-pompa tal-petrol illi attwalment il-MEPA kienu għalqulu ghax kien bena sular aktar minn dak lilu permess.

Il-Qorti tosserva illi, kif johrog car mix-xhieda, l-familja Gaffarena ppretendiet illi la darba hallset hafna flus lill Partit Nazzjonalista, saħansitra ammont ta' ghoxrin elf Euro ftit gimghat qabel il-laqgħa, huma kienu qed jistennew illi jinhargilhom il-permess illi kellhom bzonn, u talli tali permess ma harigx, huma kienu disposti illi jagħmlu allegazzjonijiet inveritjeri, anke bil-gurament.

Għaldaqstant, johrog car illi l-bazi tal-artikoli meritu tal-kawza odjerna, ossija l-verzjoni tal-fatti ta' Joseph Gaffarena, ma hijiex sostanzjalment vera u, anzi, hija totalment kontradetta kemm mir-rikorrent u, aktar u aktar, minn Dr Joseph Cassar, illi kien il-persuna illi laqqa lill Joseph Gaffarena mar-rikorrent u li kien presenti dakinhar.

Il-Qorti thoss, f'dana l-istadju, illi għandha tagħmel referenza għal dak osservat mill-Qorti tal-Appell (Sede Inferjuri) fis-sentenza '**Sylvana Debono vs Alexander Farrugia**', deciza fis-27 ta' Jannar, 2016.

Id-dritt tal-liberta tal-espressjoni m'huwiex licenzja biex thammeg ir-reputazzjoni ta' haddiehor u mbaghad tipprova tistahba wara dan id- dritt.

Kif gie ukoll osservat mill-Qorti tal-Appell (Sede Inferjuri) fis-sentenza '**Engineer Anthony Bezzina vs Josef Caruana**' deciza fl-10 ta' Marzu 2017,

Filwaqt li gurnalist ghandu kull jedd u anzi dmir li jirrapporta grajjiet ta' interess pubbliku, pero' ghandu jaqdi dmirijietu in bona fede u m'ghandux jedd jakkuza persuna b'fatti li ma jkunux veri. Id-dritt tal-liberta ta' espressjoni mhuwiex dak li tivvinta .

Konkluzjoni

Il-Qorti,

Wara illi rat il-provi kollha prodotta quddiemha,

Wara illi seghet it-trattazzjoni orali ta' l-abbli difensuri tal-partijiet,

Wara illi ghamlet il-konsiderazzjonijiet kollha taghha kif fuq spjegat,

Tghaddi biex taqta u tiddeciedi l-kaz billi

Tichad l-eccezzjonijiet kollha ta' l-intimati,

Tilqa t-talba tar-rikorrent kif dedotti u

Tiddikjara il-kontenut ta' l-artikolu ppubblikat fuq il-gurnal 'L-Orizzont' fit-tlieta (3) ta' Awissu tas-sena elfejn u hmistax (2015) fl-ewwel (1) u fil-hames (5) pagna, intitolat fl-ewwel (1) pagna 'Busuttil sieket dwar jekk iltaqax ma' Gaffarena' li jkompli fuq il-hames (5) pagna bit-titolu 'HEKK KIF NIRBAH JIEN IRRID NAFFACCJA DAN KOLLU!', li tieghu l-intimat kien l-editur u ghalhekk responsabbli, bhala libelluz u malafamanti fil-konfront tar-rikorrenti u ghalhekk

Tikkundanna, a tenur ta' l-artikolu 28 tal-Kap 248, lill-intimat ihallas lir-rikorrent is-somma komplessiva ta' elf Euro (€1,000) in linea ta' danni sofferti minnu rizultat tal-pubblikazzjoni ta' l-istorja fuq imsemmija.

Spejjez tal-proceduri odjerni ghandhom ikunu a kariku ta' l-intimat

Magistrat Francesco Depasquale

Rita Sciberras
Deputat Registratur